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Attorneys for Plaintiff and Class Members

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

LARRY GRAVESTOCK, individually,  
and on behalf of other members of the  
general public similarly situated,

Plaintiff,

vs.

ABILENE MOTOR EXPRESS, INC., a  
Virginia corporation, and DOES 1-10,  
inclusive,

Defendants.

CASE NO. 8:14-cv-00170-JVS-RNB

The Hon. James V. Selna  
Courtroom 10C

**JOINT RULE 26(f) REPORT**

Hearing Date: May 19, 2014  
Hearing Time: 1:30 p.m.  
Courtroom: 10C

Action Filed: December 19, 2013  
Trial Date: None Set

1 Plaintiff Larry Gravestock ("Plaintiff") and Defendant Abilene Motor  
 2 Express, Inc. ("Defendant"), through their respective undersigned counsel, hereby  
 3 respectfully submit the following Joint Scheduling Conference Report Pursuant to  
 4 Rule 26(f) ("Joint Report") for consideration by the Court. The Joint Report  
 5 addresses the issues required by Federal Rule of Civil Procedure 26(f) ("Rule  
 6 26(f)"). To the extent that the parties do not agree on issues discussed herein, their  
 7 respective positions on such issues are included under separate headings in this Joint  
 8 Report.

9 Moreover, the parties request that the Court continue the Rule 26(f)  
 10 Scheduling Conference to a date after the Ninth Circuit issues its ruling on the  
 11 appeal in *Dilts v. Penske Logistics, LLC*. As discussed below, the parties agree that  
 12 many of the issues discussed herein are premature prior to the ruling on Defendant's  
 13 Motion to Dismiss, which the Court stayed pending the decision in *Dilts*.

#### 14 **I. Rule 26 Meeting of Counsel.**

15 On April 29, 2014, the parties held their Rule 26(f) meeting of counsel to  
 16 prepare this Joint Report. Shawn Westrick of Kawahito Shraga & Westrick LLP  
 17 represented Plaintiff and Tracy Wei Costantino of Lewis Brisbois Bisgaard & Smith  
 18 LLP represented Defendant. The parties discussed the items identified in Fed. R.  
 19 Civ. P., Rule 26(f), as well as those identified in the Court's Standing Order.

#### 20 **II. Rule 26(f) Issues.**

##### 21 **A. Synopsis of Main Claims, Counterclaims, and/or Affirmative** 22 **Defenses.**

##### 23 **1. Plaintiff's Claims**

24 Plaintiff seeks to represent a class of truck drivers who performed work in  
 25 California. Plaintiff pled nine causes of action: (1) failure to pay minimum wage;  
 26 (2) failure to pay agreed upon wages; (3) failure to provide meal breaks; (4) failure  
 27 to provide rest breaks; (5) failure to pay all wages at termination/discharge;  
 28 (6) failure to provide accurate wage statements; (7) failure to reimburse expenses;

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1 (8) failure to pay all vested vacation wages; and (8) unfair business practices.

2 Specifically, Plaintiff alleges that truck drivers are not paid for time spent  
3 waiting for their trucks, either during pick-up or drop-off or when trucks were being  
4 repaired. Truck drivers were not provided with meal breaks or rest breaks. Truck  
5 drivers incurred necessary expenses, including, but not limited to, money spent on  
6 repairs or maintenance of Defendant's trucks and that Defendant did not reimburse  
7 for these expenses. Plaintiff also alleges that Defendant had an illegal "use it or lose  
8 it" vacation policy.

9 Plaintiff believes that these allegations were the result of company-wide  
10 policies and practices of Defendant and that a class of truck drivers should be  
11 certified pursuant to Federal Rule of Civil Procedure 23.

## 12 2. Defendant's Defenses

13 Defendant contends it properly compensated Plaintiff and that California meal  
14 and rest period laws do not apply to Plaintiff.

15 Defendant contends that the requirements of Rule 23 for class certification  
16 cannot be met. Without waiving any right to make additional arguments or revise  
17 the arguments based upon further information and investigation, at the appropriate  
18 time, Defendant contends that Plaintiff is an inadequate class representative, that  
19 there is no class as defined by the Complaint as Defendant did not employ more  
20 than approximately four employees in California during the class period, and that  
21 there is no commonality or typicality among its employees regarding the claims  
22 alleged in the Complaint.

### 23 B. **Brief Description of the Key Legal Issues.**

#### 24 1. Plaintiff's Description of Key Legal Issues

25 At present the parties are awaiting the Ninth Circuit's decision in *Dilts v.*  
26 *Penske Logistics, LLC*, which addresses the preemption issue at heart of  
27 Defendant's Motion to Dismiss. Additionally, Plaintiff believes the parties will  
28 address whether there is a class of California employees. Defendant maintains that

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1 there were only a handful of California employees. Plaintiff alleges that a  
 2 substantially higher number of truckers worked in California, subjecting Defendant  
 3 to California's wage and hour laws. Whether this issue is briefed prior to class  
 4 certification is unknown at present. Plaintiff also anticipates the parties disputing  
 5 whether certification is appropriate.

## 6 2. Defendant's Description of Key Legal Issues

7 Defendant asserts that the meal and rest period claims are preempted by the  
 8 FAAA and that there is no putative class as Defendant did not employ more than  
 9 four California employees during the purported class period.

### 10 C. Damages

11 The parties find that estimating damages is premature prior to the ruling on  
 12 the Motion to Dismiss.

### 13 D. Insurance Coverage

14 Defendant is covered by an insurance policy for limited defense costs only  
 15 and there is reservation of rights.

### 16 E. Likelihood of Motions Seeking to Add Other Parties or to File 17 Amended Pleadings; Motions to Transfer Venue.

18 It is unlikely that Plaintiff will seek to add other party defendants at this point,  
 19 however, Plaintiff expressly reserves his right to do so should further investigation  
 20 or discovery warrant naming additional defendants. Defendant does not anticipate  
 21 adding any parties. The parties do not know whether the pleadings will need to be  
 22 amended until after the Court's decision on Defendant's Motion to Dismiss. Neither  
 23 party anticipates filing motions to transfer venue.

### 24 F. Discovery and Experts

25 The parties find that discovery is premature prior to the ruling on Defendant's  
 26 Motion to Dismiss.

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**G. Dispositive Motions**

The parties find that anticipating any such motion is premature prior to the ruling on Defendant's Motion to Dismiss.

**H. Settlement and Settlement Mechanism**

The parties find that settlement discussions are premature prior to the ruling on Defendant's Motion to Dismiss.

**I. Trial Estimate**

The parties find that this is premature prior to the ruling on Defendant's Motion to Dismiss.

**J. Timetable**

The parties find that this is premature prior to the ruling on Defendant's Motion to Dismiss.

**K. Other Issues**

None at this time.

**L. Conflicts**

None at this time.

**M. Magistrates**

The parties do not consent to a magistrate at this time.

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1 DATED: May 13, 2014

Respectfully submitted,

2 **LEWIS BRISBOIS BISGAARD &**  
3 **SMITH LLP**

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5  
6 By: 

John L. Barber

Tracy Wei Costantino

Anna Kim

Attorneys for Defendant Abilene Motor  
Express, Inc.

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10  
11 DATED: May 13, 2014

Respectfully submitted,

12 **KAWAHITO SHRAGA & WESTRICK LLP**

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14  
15 By: 

Shawn Westrick

Attorneys for Plaintiff Larry Gravestock

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**BRISBOIS**

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